

MINUTES

MILWAUKIE CITY COUNCIL DECEMBER 7, 2004

CALL TO ORDER

Mayor Bernard called the 1947th meeting of the Milwaukie City Council to order at 6:30 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster
Councilor Joe Loomis

Councilor Deborah Barnes
Councilor Susan Stone

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Alice Rouyer,
Community Development/
Public Works Director

Larry Kanzler,
Police Chief
Grady Wheeler,
Information Specialist
Jeff King,
Project Manager

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard remembered former Mayor Bill Hupp and neighborhood activist and Budget Committee member Jean Michel.

Mayor Bernard welcomed Jeff Rouyer and Eric and Anna Marie.

Mayor Bernard announced a reception for Councilor Lancaster on December 21, 2004. He served on City Council for over six years, and that would be the final meeting of his term.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the Consent Agenda that consisted of:

- A. City Council Minutes of November 16, 2004;
- B. Printing Contract for City Newsletter;
- C. O.L.C.C. Application – Stargazer Gift Baskets, 9423 SE 32nd Avenue;
- D. Letter of Support for 2007 – 2008 Transportation Enhancement Projects;
and

E. Resolution 38-2004: A Resolution of the City Council of the City of Milwaukie, Oregon Recording the Certified Election Results for the November 2, 2004 General Election.

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

Ed Zumwalt, 10888 SE 29th Avenue, Milwaukie, Oregon. He read from a compilation of notes. This would be the last confrontational thing from them because they were going to try to be nice for two or three weeks. For ten years, the citizens from all the neighborhoods and walks of life fought against light rail and intrusions into the neighborhoods. It came crashing through the neighborhoods like Monroe Street. Fast forward to April Fools Day of last year. The city manager praised the Neighborhood District Association (NDA) leadership in helping to form the Locally Preferred Alternative (LPA). The Council praised the LPA and the 14 Points identifying as the main point that light rail stay out of residential neighborhoods and have as low impact as possible in neighborhoods. The latest decision on Kellogg wiped out ten years of work to protect the neighborhoods. You handed us over to Metro and TriMet with a big red ribbon. Merry Christmas. This was disturbing the entire neighborhood. Two weeks ago Councilor Barnes stated she talked to a local businessman who said if you listened to the citizens, you would never have any businesses in town. What gave that businessman the right to put down the citizenry of Milwaukie? Furthermore, why did the Councilperson buy that statement hook, line, and sinker? It's insulting. At the beginning of this latest working group, Mr. Roger Cornell and he greeted the North Industrial business people with open arms assuring them he would work closely with them to overcome their problem. Sort of a joke on us in retrospect. A little history, which Mr. Zumwalt was sure Mayor Bernard would remember. He used to attend meetings of the local downtown business group, and most of them did not give a hoot about the neighborhoods particularly Historic Milwaukie. Remember – running light rail right up Monroe. They said, oh, they will be well taken care of – you were going to wipe out the whole neighborhood. One hundred twenty-five feet south; one hundred twenty-five feet north of Monroe was going to be wiped out by mixed use. That sort of took care of the neighborhood. When the downtown plan was okayed in 2000 and when possible traffic problems in the neighborhood were mentioned, the statement was made by that organization, "who cares – just so we get the density we want." Remember that, Mayor. Our NDA and I'm sure all of the neighborhoods want and will work for a vibrant, alive busy town. We have said it many times and have proven it many times. We are not anti-business. It is some of the business people who want to go on without caring about the City as a whole. The latest push to rid them of the transit center was just another case in point. He would be the businessman who made that comment did not live anywhere near Milwaukie. It was very disheartening to have a Councilperson blindly side with a business against the citizens. It was very disconcerting to have a warehouse full of Tootsie Rolls be more worthy than the neighborhood. This was a sure sign the residents were going to take a beating from this Council.

Another point regarding the work session two weeks ago. In defending staff against lack of service complaints against them by business, the comment was that the staff had given 100% effort to make sure the transit center was moved from North Industrial to Kellogg Lake to retain the viability of the industrial area. What about the viability of the neighborhood? He was shocked, shocked to hear that. All the time, he was told this was a fair and biased group working for the best possible solution. Every time he asked a member of staff for their opinion, he was told he had to make his own decision. This was to come from the bottom up. Now he found there was a bias on the part of staff – who would have guessed? To answer charges from some Councilmembers and others, it has been – he was asked by two Councilmembers and some other people – why Roger Cornell and he went along with the whole working group and did not say a word and did not bring up anything against the transit center going to Kellogg Lake. That was not true. They did not meekly go along with that Working Group. From the time the matrix was brought forth until the end, he disagreed. He constantly asked staff to revisit the Downtown Plan in order to find the best and most efficient siting of the center but to no avail. He was thinking specifically about economic development because he did not think there would be any economic development at Kellogg Lake. We needed it further toward where the businesses and people were. Where would you build? In the Lake? He just did not understand and wished someone would explain it to him. Roger Cornell finally did revisit the Downtown Plan, and he made an excellent presentation to the Working Group. It was promptly ignored. He phoned the city manager to tell him the process was being orchestrated – also to no avail. He was asked to respect the process and go along with it. Roger and he were shouted down by two of Milwaukie's most honored citizens prompting Roger to say, "I'm going to shut up – this train has left the station." It was all so obvious. Why should we sit there and be insulted because they were outnumbered 35 to 3 because they were against the transit center going down to Kellogg Lake. In addition, he contacted each Councilperson by phone or in person and informed them of the stacked process. To no avail, obviously to three of you, roughly twice as many people testified against the center as for it. Didn't that tell us something? Seven hundred and forty signatures on petitions against. Didn't that tell us something? We now realized you would not pay attention to the citizens and made it easy for us to just pursue other avenues for our answers. The general feeling of the group was that our NDA was insulted, laughed at, and vilified. Pariahs in our own town. We do not feel as if we were part of the City or even being listened to by it. We were made the bad guy in this scenario just because we had guts enough to stick up for our rights. That was the feeling of the neighborhood. We don't like it – Merry Christmas. We don't feel we want that down at Kellogg Lake. If we can stop it in any way we can, we will.

Councilor Barnes asked what it would take to have a working relationship with Mr. Zumwalt in particular and with the neighborhood association in the future because this decision was made, and it was time to move on. She was not going to re-hash the transit center decision with Mr. Zumwalt tonight. That was over. She wanted to know what it would take as a leader for the neighborhood to take the decision that was made and go forward to work on things that could be done to make the City better.

Mr. Zumwalt said he always strived to make the City better. The neighborhood stood second to no one in doing things for the City. We worked hard for 21 months with Metro and TriMet.

Councilor Barnes wanted to know what could be done for the future. Let's not re-hash the transit center tonight. What can we do to bridge the problem that was obviously there, so that City staff, Council, Mr. Zumwalt, and the neighborhood association can have a working relationship again?

Mr. Zumwalt said with this hanging over us right now, and all the feedback he got from his neighbors, it was going to take something out of the ordinary. How can you sit and say that one businessman said if you listen to the citizens you wouldn't have any businesses? He would do anything to make this a viable, vibrant town.

Councilor Barnes suggested setting up a time to determine what was equally happy for both sides. Would you be willing to do that?

Mr. Zumwalt said he was. But he sat down with Ms. Barnes, and he thought there would be a good chance of working out a situation for the transit center. He was asked to completely betray his neighbors and friends. He did not have the authority to do that. How can you work out something that was a pig in the poke? He was told that Metro would sign this. TriMet would sign this. ODOT would sign this. Everything would be hunky-dory. What?

Councilor Barnes did not wish to re-hash the transit center. She asked if representatives could sit down and come up with something in order to move forward.

Mr. Zumwalt said if Councilor Barnes thought he enjoyed this, she was sadly mistaken.

Councilor Barnes understood that. Can we – whomever Mr. Zumwalt wished to bring from his neighborhood association, City staff, and she and any other Councilmembers – sit down and see if we can come up with something.

Mr. Zumwalt said the last Working Group with Metro and TriMet – he did not want another dog and pony show. He thought they should be treated with respect. He thought someone kicked the football and went around end this last time. Okay, you don't want to re-hash it. He did not just parachute in here from Mars. He had been in on things like this before, and Milwaukie was known for a long, long time as the City of the done deal. We overcame that, but now we were back to it.

Councilor Barnes asked Mr. Zumwalt to let her know when he was available, and a time would be set up.

Mr. Zumwalt said he was not just being meeting with her. He wanted some other people involved.

Councilor Barnes said the meeting would include Council, staff, and NDA representatives. Let us know.

Mr. Zumwalt told her to set it up, and they would be there.

Councilor Barnes asked for some dates he would be available.

Mr. Zumwalt wanted everyone to remember no dog and pony show. Everyone lays it out.

PUBLIC HEARING

Clackamas Education Service District Conditions of Approval for Meetings, File CS0-00-06

Mayor Bernard called the public hearing on Clackamas Education Service District's request to amend the conditions of approval to order at 6:50 p.m.

The purpose of the hearing was to consider public comment on the proposed amendment of CSO-99-08 to allow increased meetings on a permanent basis

The applicant had the burden of proving that the amendment was consistent with the Zoning Ordinance Section 321 – Community Service Overlay, Section 1011.3 – Minor Quasi-Judicial Review, and applicable Municipal Code provision.

Testimony and evidence was directed toward the applicable substantive criteria just described or other criteria in the plan or land use regulation which one believed to apply to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council an adequate opportunity to respond to each issue would preclude appeal to LUBA based on that issue. Failure to raise constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow a response would preclude action for damages in circuit court.

Mayor Bernard reviewed the conduct of the hearing.

Conflicts of Interest and Site Visits: **Mayor Bernard** and **Councilors Barnes** and **Loomis** had visited the site.

Councilor Barnes announced she was paid by the Education Service District as a teacher in the North Clackamas School District.

Mr. Firestone said a conflict would only arise if Councilor Barnes's vote on the matter would result in a financial benefit to her. He understood she would be paid regardless of her vote on this matter so would not constitute a conflict.

Mayor Bernard said the property was adjacent to his backyard, and a member of the public raised that as an issue at the last hearing. He did not believe extended hours of the parking lot adjacent to his back yard would represent a financial detriment or benefit. He believed he could decide this issue fairly based on the facts presented.

Jurisdictional Issues: None.

Staff Report: **Mr. Firestone** provided the staff report. Some time ago the Clackamas Education Service District (ESD) sought an approval for a community service overlay, and a condition of approval was imposed limiting the times, hours, and numbers of meetings. There was a public demand for additional meetings at the facility, and some came from outside organization such as the Lake Road Neighborhood Association. Based on that, Clackamas ESD sought a modification of the original condition of approval on a temporary basis to allow additional meetings, hours, and numbers. That approval was granted, so there was a temporary condition. During the time the temporary condition was in effect, there were no complaints made, concerns raised, or comments received about the expanded meetings and hours. ESD sought to make the temporary provision permanent to allow the additional meetings, hours of operation, and numbers of people. Based on the lack of adverse comments, staff recommended approval of the application.

Correspondence: None.

Public Testimony: None.

Mayor Bernard closed the public testimony portion of the hearing at 6:55 pm.

Mayor Bernard found that ESD had done a very thorough job of maintenance and security. The lights were off at the designated times, and he felt the operation was very safe and beneficial to his neighborhood. He noted there were neighbor concerns expressed at the last hearing, but that person was not at this meeting. He was comfortable that this was a good recommendation.

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve Clackamas Education Service District's request to allow increased meetings on a permanent basis. Motion passed unanimously. [5:0]

OTHER BUSINESS

A. Agreement between City and Milwaukie Pioneer Cemetery Association Regarding the Leona Knutson Trust Fund

Mayor Bernard announced this item was postponed to December 21, 2004.

B. Status Report on Economic Development Grant Projects and Regional Partners

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Mr. King provided an update on the economic development grant program and the Regional Partners. There was an initial feasibility study on the 6-acre parcel at International Way and Harmony Road to look at access issues, and solutions were being hammered out for that intersection. This was approximately an 80,000 square foot project that would create about 100-plus jobs in a combination of small industrial and service operations. Several businesses had already signed letters of intent with the developer Pannatoni. The enterprise zone marketing flyer was being distributed, and the City was launching a website that focused on economic opportunities in Milwaukie. The other areas of focus were business outreach and visitation. A number of businesses were looking at growing or expanding, and the Committee was offering to follow up on their needs. He discussed current efforts that included discussions with OLCC.

At its January meeting, the Advisory Committee would consider Milwaukie's strengths and weaknesses, oversight of the development grant, increased dialogue, and recommendations to the Council. Mr. King discussed a business questionnaire and the building re-use assessment.

Mayor Bernard believed there was a lot of potential.

Mr. King provided an update on Regional Partners. The organization was beginning to gain some visibility and brought together a lot of partners. There were about 12 city members in the Metro area and Regional Partners was a centralized source for information. The group was trying to build visibility, and leaders and champions were a critical piece. He recommended maintaining the annual \$3,000 membership.

Councilor Barnes thought it was a good investment, and that Milwaukie should continue for another year.

Mr. King served as the Milwaukie representative, and the City Council may wish to select an alternate.

Mr. Swanson added the membership amount was in the adopted budget.

Mayor Bernard volunteered to serve as the alternate. He discussed the feasibility of renaming streets in the North Industrial area.

C. Notification of Private Vehicle Tows 10.54.020

Mayor Bernard commented that a business in Milwaukie was concerned that its employees were getting a lot of tickets and asked Chief Kanzler to discuss the issue.

Chief Kanzler said the system would be to abide by the law and not get tickets. The police department was obligated to follow the laws as identified by the legislature and intervened at certain times. In following up on neighborhood complaints about

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speeding, officers found that most of the people being stopped lived in the neighborhood. Most of the complaints he got were about speed and traffic congestion in the City. The department was doing everything it could to make the streets safe. He asked that residents demonstrate responsibility in their driving habits.

Chief Kanzler provided the staff report. The proposed ordinance would require that tow companies notify the Milwaukie Police Department prior to towing vehicles from private properties. Over a number of years, it has come to the point that people think their cars have been stolen, and report it to the police. Without knowing that a car was towed, the department treated it as a theft and spent time and resources on looking for it. He discussed several incidents that occurred recently. There was no compliance by the tow companies, and unless there was an ordinance the police department could not apply any sanctions. Adopting this ordinance would circumvent wasting officer time looking for a stolen vehicle when it was actually a private impound or repossession. The tow companies charged a storage fee even though a vehicle was hooked up to a tow truck. He recommended the City Council adopt a penalty clause so the department could cite the tow company up to \$50 per occurrence.

Councilor Barnes asked why not charge the companies more?

Chief Kanzler thought the majority of the tow companies like Olson Bros. abided by the laws and were reputable. He suggested it might be difficult to collect from those companies that were not reputable.

Councilor Stone suggested charging \$500. This would get people's attention. She recommended putting some meat in it, and charge the tow companies. She asked if state statute required tow companies to call within an hour.

Chief Kanzler said current statute was that tow companies were required to notify the law enforcement agency prior to towing a vehicle.

Councilor Stone thought raising the fee would get compliance. She added there should be some notification to the tow companies.

Chief Kanzler noted a sample letter in the staff report that would go to all tow companies explaining what would happen if they did not notify the police department. He asked the city attorney to comment on a higher fee.

Mr. Firestone said the ordinance could be amended. The ordinance did not go into effect for 30-days, so there was a grace period.

Councilor Lancaster said for some unscrupulous person towing anything he can get his hook on, \$50 was nothing based on the number of cars they could tow. He asked the city attorney what range was reasonable while getting their attention.

Mr. Firestone thought a Class A violation was \$500.

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Mayor Bernard added that most drivers were on commission, and one penalty of \$100 would send the message.

The consensus of Council was to charge \$500. **Mr. Firestone** said the reading of the ordinance could include that amendment in section 10.54.030.

It was moved by Councilor Lancaster and seconded by Councilor Barnes for the first and second readings by title only and the adoption of an ordinance adding Municipal Code Chapter 10.54 – Towing of Vehicles from Private Property with the amendment to 10.54.030 (A) making the penalty \$500. Motion passed unanimously. [5:0]

The city manager read the ordinance for the first and second times with the amendment to subsection.

The city recorder polled the Council: Councilors Barnes, Lancaster, Loomis, and Stone and Mayor Bernard 'aye'; no nays. [5:0]

ORDINANCE NO. 1942:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING CHAPTER 10.52, TOWING OF VEHICLES FROM PRIVATE PROPERTY.

D. Designation of Acting City Manager by Adding Municipal Code Chapter 2.07

Mr. Swanson provided the staff report. It was his practice over the past four years to appoint an acting city manager when he was out of town or unavailable. A couple of weeks ago, the City had a simulated emergency exercise, and it occurred to him that there might be a situation where he could not be at the emergency operations center (EOC). One of the powers of the city manager assumed was police power and the ability to establish a curfew. He began to question whether or not his designation of an acting city manager carried anything more than his good wishes. It did not carry the authority that appeared in the code in various places. He believed it was best for him to provide for the appointment of an acting city manager and delegate the city manager's powers to the designee. **Mr. Swanson** noted Milwaukie Charter Section 27(e) provided that the City Council would appoint a city manager pro-tem; however, he felt that was burdensome for short vacations or days out of the office. The proposed ordinance allowed the city manager to appoint an acting city manager and permitted that person to assume the powers of the city manager. The City Council's appointment of a pro tem would trump this action. The proposed ordinance was a housekeeping action, but he was concerned about it based on the recent emergency exercise.

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second readings by title only and the adoption of an ordinance adding

Municipal Code Chapter 2.07 – Acting City Manager. Motion passed unanimously. [5:0]

The city manager read the ordinance for the first and second times by title only.

The city recorder polled the Council: Councilors Barnes, Lancaster, Loomis, and Stone and Mayor Bernard ‘aye’; no nays. [5:0]

ORDINANCE NO. 1943:

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO APPOINT AN ACTING CITY MANAGER AND DELEGATING NECESSARY AUTHORITY TO THE ACTING CITY MANAGER AND ADDING A NEW CHAPTER 2.07 TO THE MUNICIPAL CODE.

E. Amend Municipal Code Chapter 1.20 – Compensation for Reduction in Property Value

Mr. Firestone provided the staff report. Ordinance 1940 contained a provision that said if a claimant filed an invalid claim, he would pay the City's costs. If that was not paid, then the City could file a lien. The city attorney determined there was precedent that creating that lien would make the obligation to pay that cost a property tax subject to compression. Therefore, it would be better to collect the costs through a judgment. If it were a property tax, there was a risk that the City could not collect at all.

It was moved by Mayor Bernard and seconded by Councilor Loomis for the first and second readings by title only and the adoption of an ordinance amending Ordinance No. 1940 relating to procedures for Measure 37 claims. Motion passed unanimously. [5:0]

The city manager read the ordinance for the first and second times by title only.

The city recorder polled the Council: Councilors Barnes, Lancaster, Loomis, and Stone and Mayor Bernard ‘aye’; no nays. [5:0]

ORDINANCE NO. 1944:

AN ORDINANCE AMENDING ORDINANCE NO. 1940 RELATING TO PROCEDURES FOR MEASURE 37 CLAIMS.

OTHER

Mayor Bernard commented on Bob's Red Mill and the statement that the project would not have happened if the contractor had not come to the Mayor. That was not necessarily accurate. The project would never have happened if it were not for staff and the city manager. Being the Mayor with a business in downtown Milwaukie, people had an opportunity to talk to him and get his direction on whom to speak with in the City departments. He knew the gentleman who worked on the Bob's Red Mill project so it

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was a chance for this person to ask for help. Mayor Bernard directed him to the appropriate staff. He firmly believed that everyone shared in the success of the project.

Mayor Bernard addressed Mr. Zumwalt's comments. He considered Mr. Zumwalt a good friend, but he also totally disagreed with his comments. Mayor Bernard attended many of the meetings as well the 14-Point meetings. He saw neighborhoods working together. Staff stood back and let the community drive it. It looked like it was going well, but then suddenly at the end, comments were made that blew it all apart. He thought that was totally wrong and disagreed with Mr. Zumwalt's vision of what happened at those meetings. He thought the City did a great job as did all of those who participated. If there was a problem at the beginning, people needed to make their comments right away. The decision would be flexible as things developed. There needed to be a change of direction in this community, or the wonderful things the City had like the library would no longer exist. That can only be done by change. Change was difficult and painful, but it had to happen. There were lots of great things happening in Milwaukie. There were annexations, new jobs, and industrial lands coming into the city. There was finally some growth. The City was sitting down with the North Industrial area businesses to discuss reinvestment in the community. He totally disagreed with Mr. Zumwalt's comments. He assured the public that no comments that were made at the meeting were disregarded. No testimony was disregarded. He struggled with every comment including Mr. Cornell's. He was truly offended by his friend Mr. Zumwalt's comments. There was no conspiracy. This community needed to change, and change hurts. Mr. Zumwalt walked into his office almost daily, and he was still welcome. Someday they may come to an understanding that if there were no change, the library and planning department would be gone. Someday, it may only be the City Council sitting here waiting for someone to come along and do something for Milwaukie. He refused to be the Mayor that let nothing happen and let the community go away. He was also very offended by the comments made at Bill Hupp's funeral regarding this subject. He was very angry about that and did not know if the damage to the relationship would be repaired. Things have to change, and the City Council needed to take the pressure. He thanked Mr. Swanson and staff for putting up with what had been going on.

Councilor Loomis agreed with most of Mayor Bernard's comments. He disagreed that things needed to change -- things are going to change. What the Council was trying to do was direct change to the greatest benefit of the community. Change will happen. The process involved the citizens. He asked if he could be involved in the Working Group, and Mr. Swanson told him it was not a good idea. Mr. Zumwalt thought it was better if he stayed away and let the citizens work it out. He thought there were some positive things coming out of the process including contact with the North Industrial group. The only way the City would grow and prosper was for the businesses, neighborhoods, staff, and City Council to all work together. The only thing holding this up was Mr. Zumwalt. He needed to sit down and talk with his neighborhood and friends. Mr. Zumwalt has done a lot of great things for the City. Is this benefiting the City, or was it time to accept it and move on and make it work the best for everyone? Councilor Loomis thought it was that time. It was time to move forward.

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Mayor Bernard was proud of the support the City gave him in his election efforts. He carried all Milwaukie precincts as well as a majority of those surrounding Milwaukie. To him that said people thought he was doing a good job, and they supported him.

Councillor Stone addressed Mr. Zumwalt's and Mayor Bernard's comments. She did not think it was that people did not want to see change happen in this town. We do need some changes, and the City needed to be revitalized. She believed Mr. Zumwalt's issue along with what the City Council heard loud and clear in testimony by Historic Milwaukie was about livability and what this would do and how it would negatively impact livability. She did not believe anyone was opposed to change that would help Milwaukie grow. That was their main concern. The April 2003 decision by this City Council was to put the locally preferred option (LPA) at Southgate. The Historic Milwaukie Neighborhood was fine with that because the traffic pattern would not directly impact that neighborhood. It was not about not wanting change. It was about where it was occurring and how it would impact livability.

EXECUTIVE SESSION

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(e) – real property transactions.

ADJOURNMENT

It was moved by Councilor Barnes seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously. [5:0].

Mayor Bernard adjourned the regular session at 7:40 p.m.


Pat DuVal, Recorder